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09/669,087	09/25/2000	Carl P Pearson		3364

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EXAMINER

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ART UNIT PAPER NUMBER

3714

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/669,087
Filing Date: September 25, 2000
Appellant(s): PEARSON, CARL P

MAILED

OCT 31 2005

Group 3700

Clark A Puntigam
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/7/05 appealing from the Office action
mailed 6/2/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,200,216	PEPPEL	3/2001
6,325,292	SEHR	12/2001

5,411,259

PEARSON et al

5/1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

This is the final rejection of 6/2/04 reproduced here for the convenience of the board.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peppel US Patent 6,200,216 in view of Sehr US Patent 6,325,292 and Pearson et al US Patent 5,411,259. The rejection contained in the previous office actions are maintained and incorporated herein. The amended subject matter relative to downloaded information from the trading cards to carry out the game was previously disclosed by the combination of references above. Specifically, Peppel discloses the use of paper and electronic trading cards for use in digital format where a user of the system can make, trade and use the trading cards over electronic medium including the Internet. Columns 5-8 disclose how the cards are used, what types of media the cards are able to used on, that the cards are *media and platform independent*, and all of the specifics of on-line trading and posting of cards, distribution of cards. Peppel discloses that the cards are stored and accessed in various media, including on-line media, physical media and paper media (column 5) and that various schemes are employed to ensure scarcity and use of the trading cards such as built in copy protection, authenticity and compatibility with the consumer on line services (columns 12-13). In an analogous invention to Sehr which is a collector card service with a multi-directional communication link to allow the

exchange of data/information between and among the system entities including the cardholder via the internet or any other commercial available network technology.

Column 1 and in multiple instances throughout Sehr it is disclosed that computer programs are utilized to perform house-keeping assignments, computing and decision functions, application-specific routines, *and the communications/ networking tasks necessary for the system's operation and card usage*. These programs further include security means such as cryptographic schemes, digital signatures and authenticity codes, to protect the system, cardholders and card contents against fraudulent use.

Pearson discloses that it is well known to use a trading card with readable card information thereon in accordance with a software program in order to play a game.

Pearson discloses that the trading card element will have located thereon all of the desired performance data in machine readable form such as bar code, magnetic, optical, or other form. *Additionally, Pearson discloses that it should be understood that the invention is not limited to a data format and that the performance data could be stored in memory with the card element having a corresponding access number for the player on the card for the stored data.* Peppel, Sehr, and Pearson are of analogous art in that they are all related to the use and security of trading cards for games and entertainment. One of ordinary skill in the art would be motivated to combine the references in that Peppel column 2 that states that his system is for disassociated consumer multimedia, i.e. consumer multimedia products that allow customers to browse, create, collect, and exchange as well as play games (primary activity of the cards, Peppel column 10) with disassociated pieces of multimedia data since the data is

media and platform independent (Peppel column 5). It would be obvious to one of ordinary skill in the art to combine Peppel with the security and authentication programs of Sehr and the media structure of Pearson using the motivation provided above.

The following is a reproduction of the office action of 8/29/03 which reproduced here for the convenience of the board. The section of the office action of 8/29/03 that was repeated in the above final office action has been deleted in order to present the subject matter once.

With respect to claims 1 and 23 please see above. With respect to claims 2-5, 10, 27 where trading cards affecting the characteristics, rules, performance of selected aspects of the system column 6 of Peppel discloses that the cards may be used to operate in the context of a card trading environment and may be combined, for example in an adventure game involving character card that include clues for playing the game. Furthermore columns 10 and 11 state that ETC games are similar in structure to existing video and computer games except for a unique distinction: they require the ETC's to move the action of the game forward and in some cases also generate ETC's in the course of a game. Disassociated ETC's can serve a number of functions in an adventure game such as: they can offer clues, hints or other special properties that give the owner of the card an advantage when playing the game; augment an existing game with additional levels of play, characters or other game elements; and be offered as a reward or as proof that a player has solved a level of play in the game. With respect to claims 6-9 and 11 see columns 6-8 of Peppel that discloses registering, timing, using

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copies or replica protection and the trading of cards online. With respect to claims 12, 13 and 19-22 please see the above discussion to Pearson. With respect to claim 16 please see Peppel column 5 line 46. With respect to claims 14, 15, 17, 18, and 24-26 please see column 5 of Peppel and the above discussion relative to Media and Platform independence. Peppel, Sehr, and Pearson are of analogous art in that they are all related to the use and security of trading cards for games and entertainment. One of ordinary skill in the art would be motivated to combine the references in that Peppel column 2 that states that his system is for disassociated consumer multimedia, i.e. consumer multimedia products that allow customers to browse, create, collect, and exchange as well as play games (primary activity of the cards, Peppel column 10) with disassociated pieces of multimedia data since the data is media and platform independent (Peppel column 5). It would be obvious to one of ordinary skill in the art to combine Peppel with the security and authentication programs of Sehr and the media structure of Pearson using the motivation provided above.

(10) Response to Argument

Appellant argues that the combination of references does not teach "in which information stored at a remote website associated with a character on a selected trading card (including for instance enhanced or up to date performance information) is downloaded directly into the control system of the local electronic game system." and "There is no teaching or suggestion of a video game system using trading cards in which information concerning the subject matter of individual trading cards selected for

playing of the video game , such as a particular player in a sports based video game, is downloaded directly into the control system of the local electronic game, bypassing the trading cards themselves.”

In response to the appellant’s arguments, the examiner would note that the rejection is based on a combination of the references. Peppel teaches the use of trading cards for games with information on the trading card to be combined with and affect the game. Peppel teaches media and platform independence.

Media Independence. In all cases, the ETC software is optimized to be as media-independent as possible, meaning it depends as little as possible on any media-specific data formats. ETCs are intended to be transportable across a wide range of digital media, including CD-ROM, networked servers, fixed discs, floppy discs, data cards, writable optical storage, and RAM.

Platform Independence. In all cases, the ETC software is optimized to be as platform-independent as possible, meaning it depends as little as possible on any machine specific routines or functions. ETCs are intended to be transportable across a wide range of digital computing platforms including personal computers, video game machines, set-top boxes, personal digital communicators, and handheld computing devices. For purposes of the discussion herein, a set top box is defined as a networked or non-networked computing device which uses a consumer television set as a display monitor.

The definitions of media and platform independence teach that any transfer of information between computers and data types is not dependent on a specific type of

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data or medium. Combined with this teaching columns 3-5 of Sehr teaches updating a card with a remote database and information transfer between a remote database and the card station, which is the computer which compiles and authenticates the card contents, communicates data between the card and system entities, manipulates card data and updates the system databases, and exchanges information with the card issuer, service provider and card service center. The CARD STATION employs a plurality of means to compile and authenticate the card contents, communicate data between the card and system entities, manipulate card data and update the system databases, and to exchange information with the card issuer, service provider, and card service center. These means comprise the database (10), collector card (11), card read/write device (12), biometrics box (13), computing platform (14), and various software programs to implement the application routines and network communication as instructed by the card station. These system components are connected via a communication link (19) to allow the exchange of data/information throughout the card station. These local components, including the card station per se, are also connected via a global communication link (1234) to the remote system components, including the card issuer and service providers. The global data link also allows the cardholder to communicate with the system entities via a personal computer or card terminal installed at remote locations, such as the cardholder's home, a business office, or public places. The database (10) stores the data and information needed by the card station for the implementation of the operational functions and communications tasks. The database is linked to the other databases distributed among and between the plurality of

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operational entities--such as the card issuer, service provider, card service center and the cardholder--that are involved in the gathering, organizing, displaying, evaluating, manipulation, processing, and exchanging of data and information. In addition, this database is used for record-keeping, reporting, and inventory purposes. The database will also store an audit trail concerning the system's operations. This audit trail establishes the concept of non-repudiation with the help of a "Who did What-When-Where" recording; the recording is tamper-proof and non-erasable. . Therefore, platform and media independence as taught by Peppel and the use of databases and the card station as taught by Sehr teach that data can be accessed and used by the local computer before it is updated on the trading card.

With respect appellant's argument that the combination of references do not teach the right to use the trading card in the game see column 1:35-49 and in multiple instances throughout Sehr it is discloses that computer programs are utilized to perform house-keeping assignments, computing and decision functions, application-specific routines, and the communications/ networking tasks necessary for the system's operation and **card usage**. These programs further include security means such as cryptographic schemes, digital signatures and authenticity codes, to protect the system, cardholders and card contents against fraudulent use. Throughout the disclosure of Sehr there is disclosed that the computer programs perform the necessary functions including the communication/ networking tasks necessary for the systems operations and card usage 1:35-49, 2:45-52, 4:10-27, 5:35-40 rights, 5:44-47 internet, 7:5-30 and 13:10-23 use rights, 12:1-7 authentication. Peppel additionally discloses ETC Header

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Identification 23, i.e. an ASCII string which uniquely identifies the ETC and a lock and key mechanism to limit access and impose password protection if desired.

With respect to the appellant's arguments relative to claim 23 and the combination of the elements into a stand alone system please see Sehr 5:50-63.

Collector cards can further include PC (Personal Computer) card formats, handheld terminals or any pocket-sized computer configurations. Additionally, Peppel defines in platform independence that hand held computing devices are anticipated to be used for the trading card environment. This definition includes cell phones and Personal Digital Communicators.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

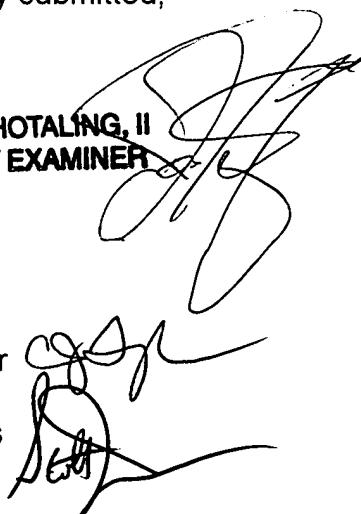
Respectfully submitted,

JOHN M. HOTALING, II
PRIMARY EXAMINER

Conferees:

Cheryl Tyler

Scott Jones

Handwritten signatures of the examiner and conferees. The signature of John M. Hotaling, II is the largest and most prominent, written over the printed name. Below it are the signatures of Cheryl Tyler and Scott Jones, also written over their respective printed names.